

NOV 16 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OMAHA STEAKS INTERNATIONAL,
INC., a Nebraska corporation,

Plaintiff - Appellee,

V.

ANSHU PATHAK,

Defendant - Appellant.

No. 04-56890

D.C. No. CV-03-01401-RSWL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Anshu Pathak appeals pro se from the district court's default judgment against him, for failure to comply with a contempt order, in a trademark action

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

brought by Omaha Steaks International, Inc. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court issued a preliminary injunction against Pathak, which Pathak ignored. The district court then found Pathak in contempt and awarded monetary sanctions. Pathak neither paid the sanctions nor adhered to the injunction. The district court placed Pathak in default as a further contempt sanction and subsequently entered a default judgment against Pathak. Pathak timely appealed.

Pathak's opening brief and reply brief failed to raise any contentions relating to the district court's contempt order or entry of default judgment. "The Court of Appeals will not ordinarily consider matters on appeal that are not specifically and distinctly argued in appellant's opening brief." *Miller v. Fairchild Indus., Inc.*, 797 F.2d 727, 738 (9th Cir. 1986). Pathak therefore waived his opportunity to challenge the district court's decisions and we decline to consider his contentions. *See id.*

Pathak's motion to amend the opening brief, construed as a request for judicial notice, is denied as moot.

AFFIRMED.